

**ROY LESLIE ANDERSON v AZKO NOBEL INDUSTRIES LIMITED  
(FORMERLY KNOWN AS TAUBMANS INDUSTRIES LIMITED) &  
ORS**

**MATTER NO. DDT 8177 OF 2008**

**CONTRIBUTIONS ASSESSMENT**

**INTRODUCTION**

1. These proceedings are a claim for damages by the plaintiff against three employer defendants being Azko Nobel Industries Limited ('**Azko Industries**') (D1), Azko Nobel Pty Limited ('**Azko**') (D2) and Ashland Pacific Pty Limited ('**Ashland**') (D3). The plaintiff alleges that he has developed asbestosis (amongst other illnesses) as a consequence of being exposed to asbestos dust and fibre in the course of employment by each of the defendants.
2. I note that in the reply filed by Azko Industries and Azko on 30 January 2009 those parties dispute the plaintiff's allegations of exposure at all on the basis that the cauldrons allegedly worked on by the plaintiff were not insulated with asbestos insulation material of a type which released fibre in the manner by which the plaintiff particularises exposure against them.
3. In the reply filed by Ashland on 18 February 2009 it does not admit exposure as alleged.
4. I note that the replies filed by the defendants challenge a finding of liability in each of them, however, in assessing contribution I am bound by clause 49(4) of the *Dust Diseases Tribunal Regulation 2007* to determine contribution between the defendants on the assumption that the defendants are liable save as to a situation provided for in clause 49(5), being where the defendants agree that a particular defendant should not be assumed to be liable. I am unaware of any such agreement in this matter.
5. I further note that I am obliged to assess contribution in accordance with the *Dust Diseases Tribunal (Standard Presumptions - Apportionment) Order 2005* and by reference only to the plaintiff's statement of particulars and the defendants' replies on the claim.

**FACTS**

6. Without making a final determination on the issue and for the purpose of assessing contribution only, the relevant facts are as follows:
  - 6.1 The plaintiff was employed by Azko Industries between 1951 and 1953.
  - 6.2 The plaintiff was employed by Azko between about June 1953 and 1956.
  - 6.3 The plaintiff was employed by Ashland between 1956 and February 1960.

- 6.4 In each period of employment the plaintiff worked a 5 day fortnight, each shift being of 13 hours in duration.
- 6.5 The plaintiff's duties during each period of employment were relevantly identical requiring him to load chemicals into cauldrons.
- 6.6 The plaintiff was exposed to asbestos dust and fibre as a consequence of coming into contact with asbestos insulation around the cauldrons such that it contaminated his overalls. He inhaled that dust at the time of contacting the insulation material and also when shaking out his overalls at the completion of each work day.
- 6.7 From time to time (about 3 to 4 times per annum), the cauldrons were maintained which maintenance included some removal of and replacement of asbestos lagging. The plaintiff did not personally perform this work but was from time to time present when that work was being undertaken and as a consequence inhaled dust.
- 6.8 The plaintiff, as a consequence of inhaling the dust in the course of employment by each defendant developed asbestosis, being a '*divisible illness*' as contemplated by clause 5(8) of the Order.
- 6.9 The plaintiff estimates that 60% of his exposure occurring in the course of employment with the first and second defendants, and 40% occurred when he worked for the third defendant.
- 6.10 The defendants are not currently in a position to provide any alternative assertion as to any differentiation in exposure levels than that asserted by the plaintiff aside from the assertion by Azko Industries and Azko that there was no exposure because of a dispute as to the design of the relevant insulation to the cauldron at their factory.

#### **APPLICATION OF ORDER**

7. Clause 5(8) of the Order requires me in a divisible disease case to:
- 7.1 determine the existence of any separate periods of exposure (if any);
- 7.2 then determine what proportion of a the whole each separate period of exposure bears having regard to the number of the periods, the length of each period, and the duration of and intensity of exposure to asbestos within each period.
- 7.3 I am then to treat each separate period as equal in contribution to the disease unless satisfied that a variable weighting ought to apply.
8. I note there is no controversy between the defendants that each should be classified as a Category 2 Corporation as contemplated by clause 5(2) of the order. As there is no Category 1 Corporation involved in this case the table in clause 5(1) is not relevant to apportioning responsibility between the defendants. Rather, it is appropriate to assess relative contribution to the overall exposure in assessing contribution.

9. In this regard, I note submissions in the reply to the effect that the plaintiff also encountered exposure to asbestos dust and fibre which may be causative of some proportion of the divisible asbestosis condition from which he suffers from parties not served in the proceedings. I do not consider it appropriate for me to provide any assessment as to the degree to which the exposure not subject to the plaintiff's suit against the three defendants was causative in assessing contribution. Rather, that is a matter to be assessed in consideration of the extent to which damages can be recovered and is a matter to be raised between the plaintiff and the defendants at the time of settlement discussions and/or during submissions at trial, not a matter relevant to contribution between the three defendants.
  
10. I find that there are three separate periods of exposure, being the employment period with Azko Industries, the employment period with Azko, and the employment period with Ashland.
  
11. Further, I find that there is justification for a variable weighting of those employment periods in assessing contribution. The basis on which it is appropriate to vary the weighting of the separate exposure periods is due to the difference in length of each period being:
  - 11.1 Azko Industries - 2.5 years;
  - 1.1 Azko - 2.5 years;
  - 1.2 Ashland - 3.75 years.
  
2. The plaintiff's particulars are that the nature and conditions of his employment in so far as exposure to asbestos dust and fibre is concerned was consistent throughout the three periods of employment. There being nothing to distinguish between the three periods of employment, it is appropriate for a '*time on risk*' analysis to be undertaken and, as such, I apportion contribution as follows:
  - 2.1 Azko Industries - 28.5%;
  - 2.2 Azko - 28.5%;
  - 2.3 Ashland - 43%.
  
3. As regards appointment of a single claims manager pursuant to clause 61 of the Regulation, I note that the first and second defendants are represented by the same solicitors and appear to be, although separate parties, successive employers of the plaintiff in the same group of companies. Accordingly, and taking into account the aggregate of the contribution by those two defendants is greater than the contribution of the third defendant, I appoint the first defendant to act as the single claims manager.

Dated this 29<sup>th</sup> day of April 2009

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S D Taylor-Jones